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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
ILLINOIS COMMERCE COMMISSION)
On Its Own Motion)
-vs-) No. 01-0707
PEOPLES GAS, LIGHT AND COKE)
COMPANY)
)
Reconciliation of revenues)
collected under gas adjustment)
charges with actual costs)
prudently incurred.)

Chicago, Illinois

September 21, 2004

Met, pursuant to adjournment, at 1:00 p.m.

BEFORE :

MS. EVE MORAN,
Administrative Law Judge

APPEARANCES :

MR. SEAN BRADY and
MR. JIM WEGING
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601
appearing for staff of the
Illinois Commerce Commission;

1 APPEARANCES (Cont'd.):

2 McGUIREWOODS, LLP, by
3 MS. MARY KLYASHEFF and
4 MR. THOMAS MULROY
5 77 West Wacker, Suite 4100
6 Chicago, Illinois
7 appearing for The Peoples Gas, Light and
8 Coke Company;

9 MR. RONALD D. JOLLY and
10 MR. CONRAD R. REDDICK
11 30 North LaSalle Street, Suite 900
12 Chicago, Illinois 60602
13 appearing for The City of Chicago;

14 MR. RANDOLPH CLARKE
15 100 West Randolph Street, 11th Floor
16 Chicago, Illinois
17 appearing for People of the
18 State of Illinois;

19 MS. JULIE SODERNA and
20 MR. STEVEN WU
21 208 South LaSalle Street, Suite 1760
22 Chicago, Illinois
appearing for Citizens Utility Board

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1 JUDGE MORAN: By the authority vested in me by
2 the Illinois Commerce Commission, I now call Docket
3 01-0707. It is the Illinois Commerce Commission on
4 its own motion vs. Peoples Gas, Light and Coke
5 Company, and it is a reconciliation of revenues
6 collected under gas adjustment charges with actual
7 costs prudently incurred.

8 Can I have the appearances for the
9 record

10 MR. BRADY: Appearing on behalf of staff of the
11 Illinois Commerce Commission, Sean R. Brady and
12 James E. Weging, 160 North LaSalle Street, Suite
13 C-800, Chicago, Illinois, 60601.

14 MS. SODERNA: Appearing on behalf of Citizens
15 Utility Board, Julie Soderna, Steven Wu, and Robert
16 Kelter, 108 South LaSalle, Suite 1760, Chicago,
17 Illinois, 60604.

18 MR. JOLLY: Appearing on behalf of the City of
19 Chicago, Ronald D. Jolly and Conrad R. Reddick,
20 30 North LaSalle, Suite 900, Chicago, Illinois,
21 60602.

22 MR. CLARK: Appearing on behalf of People of the

1 State of Illinois, Randolph Clarke, 100 West
2 Randolph Street, 11th Floor, Chicago, Illinois,
3 60601.

4 MS. KLYASHEFF: Appearing for Peoples Gas, Light
5 and Coke Company, Thomas Mulroy and Mary Klyasheff;
6 McGuireWoods, 77 West Wacker, Chicago, 60601.

7 JUDGE MORAN: Okay. No further appearances.

8 (No further appearances.)

9 Okay. Why don't we start with the
10 motion for sanctions. Have the parties had any
11 discussion among themselves about this issue that
12 are not reflected in the pleadings?

13 MR. BRADY: No, your Honor.

14 JUDGE MORAN: Okay. All right. Then it's for me
15 to rule. Just a quick comment, I saw something in
16 one of the pleadings. I don't remember which one.
17 I didn't grant a motion to compel awhile back. At
18 the July 21st hearing, I did, however, require
19 Peoples to tender specific responses to certain
20 questions, and I'm not saying that anybody said I
21 did. I just want to make it clear that I did not
22 grant any motion to compel, and I take it that what

1 was at issue --

2 (a brief interruption.)

3 I take it that what was at issue in
4 staff's motions for sanctions concerned the
5 responses to questions that required Peoples to ask
6 a 721 hearing.

7 All right. How long do you need,
8 Peoples, to file -- to tender those specific
9 answers?

10 MS. KLYASHEFF: Peoples need clarification on,
11 one, what it is we are to tender. We answered the
12 questions. What we haven't done is gone through the
13 hodge-podge of paper and identify specific Bates
14 numbered documents that go with specific questions.

15 JUDGE MORAN: That was the idea with the 721
16 ruling.

17 MS. KLYASHEFF: That was what your intention was?

18 JUDGE MORAN: Right.

19 MS. KLYASHEFF: That will take a considerable
20 amount of time. I don't know that I can say
21 anything less than a month.

22 JUDGE MORAN: Okay. That's fine.

1 MS. KLYASHEFF: Certainly we'll do it more
2 quickly.

3 MR. BRADY: Is that something maybe where we
4 should be most expeditious to set a status hearing,
5 give her an opportunity to see how long it's going
6 to take or have her send a general notice to people
7 how long it's going to take, since I don't know if
8 she's in a position to tell us at this time is what
9 I'm hearing.

10 JUDGE MORAN: Let me ask you one thing, and you
11 may have to confer with staff, and that's fine. If
12 you are looking for specific things or looking to
13 tie things together, is there a way that you
14 could minimize some of this so that you could narrow
15 a few things down within those discovery requests so
16 it would go faster?

17 MR. BRADY: I don't know if it's necessarily a
18 way to do that, because right now it's only with
19 respect to four questions and it's --

20 JUDGE MORAN: I'm just asking.

21 MR. BRADY: Okay.

22 JUDGE MORAN: But when I leave at 1:30, I would

1 suggest that you speak with staff and see if you
2 couldn't at least try to do that.

3 MR. BRADY: Sure.

4 JUDGE MORAN: The more narrow it is the less work
5 is involved and the less time is involved.

6 MR. BRADY: Absolutely.

7 JUDGE MORAN: So, Ms. Klyasheff, if I give you a
8 month-and-a-half to respond, would that be good
9 enough erring on the side of caution?

10 MS. KLYASHEFF: Call it one month.

11 JUDGE MORAN: Okay. So, for the record, the
12 motion for sanctions is denied, and I'm not imposing
13 sanctions at this time. If, however, responses are
14 not tendered after one month, then you can renew
15 your motion. Okay. All right.

16 The motion for extension of time, have
17 the parties had any discussions among themselves
18 about this issue?

19 MR. MULROY: When we left you, your Honor, we
20 were discussing whether or not if Peoples put a
21 filter of some kind on the electronic delivery,
22 which we differ over, and Thursday we were able to

1 eliminate some of the files that were not relevant
2 to this proceeding, whether that would assist the
3 intervenors after consultation, and intervenors and
4 staff are in agreement that they don't want a
5 filter, so the electronic production stands the way
6 it is.

7 MR. WEGING: Just by way of explanation, staff
8 we already spent the time of going through the DVDs
9 and CDs that have been presented to us and we have
10 already gone through and eliminated from the server
11 a number of irrelevant or, obviously, irrelevant
12 material, and the reason why we didn't ask for
13 additional filters were we weren't sure what the
14 time involved for us to take something off that we
15 may have already taken off didn't seem to be
16 practical. That's just staff -- from staff's point
17 of view, because we had done so much in going
18 through the original raw data.

19 Did you want to say anything further?

20 MR. BRADY: No.

21 JUDGE MORAN: Okay. How far are the parties
22 along in reviewing the DVDs and CDs?

1 MR. JOLLY: From the city's perspective, the city
2 has loaded all the information onto our server.
3 We have just recently, in the last two weeks or so,
4 had installed software which would allow us to
5 conduct billing searches of the data that has been
6 submitted, so we have been searching.

7 Part of what we are hoping to do is to
8 create I guess it's called a portal so that the AG
9 and CUB can also search the information on the city
10 server using the city's software. That's the
11 process in allowing them secure access to the city
12 system is still in process. They do not have access
13 to the city's database and the search engine at this
14 point.

15 JUDGE MORAN: Does that mean physically they have
16 to -- they have to walk over to your office?

17 MR. JOLLY: No. The hope is they can from their
18 offices electronically through the Internet site
19 have access to the database, but they have been --
20 Dave Collata (phonetic) from CUB has been coming to
21 the city's office periodically and using our
22 machines to search, and then, in addition, our

1 consultant, who we have been working with, Grant
2 Thorson (phonetic), they're in the process loading
3 the information onto their server and they have
4 their own search technology.

5 It's high energy, that they have loaded
6 a quarter -- well, I'm not certain how much they
7 have loaded, but they have indexed and have the
8 ability to or search approximately a quarter of
9 data, but the person who is there -- the person
10 who's working on this I guess he's been in Florida
11 dealing with hurricane issues for the last couple of
12 issues, so that process has come to a temporary
13 halt.

14 JUDGE MORAN: How much have you gone through?

15 MR. JOLLY: I don't know. It's difficult to say.
16 I think we have -- I don't know that we're doing
17 this -- I've been searching, and Conrad has been
18 searching, and Ellen from the city has searched.
19 Dave Collata has searched it. I don't know if I
20 could say how much a person -- as to how much we
21 have gone through.

22 MS. SODERNA: It's not really a matter of going

1 through document by document, because the way
2 they're organized, it's files within files, you
3 know, so it's not really a sequential process.

4 JUDGE MORAN: And I understand you are doing
5 searchings of things and it's not the same thing as
6 looking at something and physically --

7 MR. BRADY: Your Honor, I think staff maybe it
8 sounds like is a little bit ahead of where the
9 intervenors are at, but I can comment on the fact
10 that some of the documents that we have been able to
11 obtain are -- is revealing information at this time
12 that would have been responsive to earlier data
13 requests, so there's a lot of new information that's
14 just now coming to light, which staff is trying to
15 piece together, and I think at this time it's hard
16 to describe how far they have actually searched,
17 because it's not like it's going document by
18 document, so that's where staff is at this point.

19 MR. CLARKE: Your Honor, for the AG, we are
20 hoping that the city's efforts provide us with the
21 proof that is described soon, but, in the meantime,
22 the AG continues to invest a lot of time and effort

1 into loading the disks. They're almost all loaded
2 and the AG's spent a great deal of time going
3 through them, similarly is finding documents that
4 point a new direction, documents dealing with issues
5 that aren't brand new to the case, but the documents
6 themselves are ones that we haven't seen before, so
7 we are going through it.

8 MS. SODERNA: As far as CUB is concerned, for the
9 record, Grant Thorson is now in possession of our
10 hard drive that we loaded the data on. We are
11 trying to share resources here so everyone doesn't
12 have to upload every single disk, so we don't have
13 access to it in our office. We have to go to the
14 city.

15 JUDGE MORAN: Until you get this web hooked
16 up --

17 MS. SODERNA: Right.

18 JUDGE MORAN: -- how long will it be?

19 MR. JOLLY: Talking to our IT people, they were
20 hoping the beginning of this week hopefully. That
21 hasn't happened as of today, so hopefully maybe this
22 week.

1 JUDGE MORAN: Do you have any estimate about how
2 long this process is going to take, anybody?

3 MR. BRADY: We were talking to staff about that
4 this morning. There's -- it's hard to define in
5 light of the fact we are finding new information we
6 thought should have been provided in response to
7 data requests previously asked, so we are trying to
8 move along as quickly as possible.

9 I think we are in the position where we
10 already have the material loaded on to a hard drive
11 and able to do searches. We're ahead of the
12 intervenors. We were looking at intervenors'
13 motions. We had said we were estimating another
14 month at that point. The time we filed our motion,
15 which was about a month ago, we figured two months
16 to get through this information once we had it
17 loaded. We filed -- we already had the information
18 loaded onto the hard drive at that time, so --

19 MR. WEGING: Staff could not give us an assurance
20 that they could be done in 30 days. We pressed them
21 on it, and staff is just not clear how long it's
22 going to take for them to complete the searching of

1 all this electronic material.

2 JUDGE MORAN: That brings me to another question
3 then. Is the lawyers not participating in this? I
4 take it Mr. Jolly is physically participating in
5 this. Staff, OGC is not looking through the
6 records?

7 MR. BRADY: I have not physically looked through
8 these documents, other than some of the documents
9 that came to rise at our last status hearing.

10 JUDGE MORAN: Is there any reason why you can't?

11 MR. BRADY: There isn't any reason why I can't,
12 but prior to this point, my schedule as far as case
13 load --

14 JUDGE MORAN: Right.

15 MR. BRADY: -- is just --

16 JUDGE MORAN: I understand you have things to do.

17 MR. BRADY: Right, but there's no time -- there's
18 no prohibition against me looking -- actually
19 looking at documents.

20 JUDGE MORAN: You are going to have to acquaint
21 yourself with that sooner or later, might as well
22 start as soon as you can. It will cut down work at

1 the end.

2 MR. CLARKE: For the record, while that point is
3 in this proceeding, for the AG, I have spent
4 significant time personally looking at these
5 documents.

6 JUDGE MORAN: Okay. Thanks. All right. What
7 else has been done here since the last status
8 regarding getting ready for trial? Can anybody tell
9 me what they have done? Anybody?

10 MR. CLARKE: We are in the process of reviewing
11 the documents.

12 MS. SODERNA: Discovery's not essentially trial
13 preparation.

14 MR. CLARKE: As staff has indicated, new
15 documents appear and theories as a result of that
16 theory is involved, but I've been reviewing
17 documents and spending a lot of time reviewing the
18 documents and devising my theory in preparation for
19 the trial.

20 MS. SODERNA: CUB has also been doing significant
21 amounts of legal research on different theories and
22 whatnot putting the pieces together.

1 JUDGE MORAN: Staff.

2 MR. BRADY: We had identified -- we had mentioned
3 before the fact about the depositions, so we are
4 trying to get that finalized to take oral
5 depositions. We are hoping to have that finalized
6 shortly. That's one of the issues that's
7 outstanding is budgetary at this point, and so
8 there's been a focus on that, as well as staff has
9 been putting in overtime on reviewing the documents
10 to try and get through the discovery that's been
11 produced today.

12 JUDGE MORAN: All right. How many depositions do
13 you think you are going to have to take roughly?

14 MR. BRADY: Right now we are in the 15 to
15 20-person range.

16 MR. MULROY: Judge, may I ask that you consider
17 putting -- and this has been talked about
18 depositions for about two months now, maybe a little
19 bit longer -- some kind of cutoff on when these
20 depositions have to be noticed by. That would be
21 helpful and also when they should be completed would
22 be -- would also be helpful. I know you are

1 considering your schedule now. The longer they wait
2 to notice the depositions, of course, the longer
3 everything strings out.

4 MR. BRADY: Staff is hoping to get with the
5 schedule that we had submitted. We were intending
6 to file that motion within the next ten days or so
7 with the idea of taking depositions, finishing
8 depositions sometime by the middle of November.

9 JUDGE MORAN: I have to tell you you think you
10 are going to take 20 deps --

11 MS. SODERNA: That's about the same size of the
12 list that intervenors are looking at right now.

13 JUDGE MORAN: I don't understand why 20
14 depositions take six weeks. The average deposition
15 should take a week coordinating the schedule.
16 That's why you start noticing up early. You have
17 got a million people to worry about, so if you could
18 start noticing up your deps, and when I get back,
19 we'll talk about some kind of deposition cutoff or
20 some kind of cutoff, at least the noticing them up,
21 then we'll continue. Okay.

22 MR. BRADY: Thank you.

1 (Whereupon, a recess was
2 taken.)

3 JUDGE MORAN: Okay. So we were at the
4 depositions.

5 MR. MULROY: We were discussing my request that
6 you enter a date by which the notices should be due.

7 JUDGE MORAN: I'm happy to do that, but I would
8 rather just enter a discovery cutoff period, so it's
9 just dead.

10 MR. MULROY: You mean for deposition discovery?

11 JUDGE MORAN: Any kind of discovery. We need
12 to --

13 MR. MULROY: One of the issues that we are going
14 to face is that they have 20 depositions. We are
15 concerned that they move very quickly, and it may be
16 that you will have to consider a proposed deposition
17 schedule. It seems to me that you can take 20
18 depositions in a case like this awfully fast, which
19 is what our hope would be, and that's what we like
20 to propose, so --

21 MR. BRADY: I don't -- at least our intent was in
22 following the schedule. The amendment to the

1 schedule was to include as part of those deps
2 questions about these electronic documents that we
3 find, so part of its coordination needs to be tied
4 with the review of these electronic documents.

5 JUDGE MORAN: I'm not sure I understand what that
6 means.

7 MR. BRADY: All right. We have the manner in
8 which the documents -- the electronic documents have
9 been produced. They're not tied to a specific
10 question, so we don't know what it relates to. It's
11 just a document that we find and we look at and
12 it's -- oh, it's interesting, this is a memo from so
13 and so and so to so, or this is an e-mail, so part
14 of it is there needs to be -- some of it, the
15 information that's within that document, then raises
16 additional questions, which would be part of -- at
17 least what I'm envisioning, part of the oral
18 deposition to try and understand exactly what
19 happened with all of these gas transactions and
20 Peoples Gas relationship with Enron affiliates.

21 JUDGE MORAN: Mr. Kelter.

22 MR. KELTER: I would just add that we've been

1 through a similar experience in the Nicor case in
2 terms of attempting to do depositions. I believe we
3 did about a dozen over a 2 1/2-week period and it
4 took every ounce of energy on behalf of many
5 attorneys to do them that quickly.

6 I just want to point out that, you
7 know, sometimes it takes 15, 20 hours of preparation
8 just to do one hour of questioning on these deps,
9 because the issues are very complex and very
10 difficult to work through, so I just don't want us
11 to underestimate how tough it is and how
12 time-consuming it is for to prepare for depositions
13 and get them done. I'm not saying we shouldn't move
14 quickly. I'm just trying to put a little
15 perspective or from what we learned in the Nicor
16 case on similar issues.

17 JUDGE MORAN: Okay. Well, so I take it that
18 staff and the intervenors' part it's getting their
19 prefiled testimony together? Is that what I'm
20 gathering?

21 MR. CLARKE: For the AG, the sequence of events,
22 as I see it, was reviewing the discovery material,

1 building on the review of discovery material, the
2 depositions, and then once all that information is
3 together, then we'd be prepared to put together our
4 prefiled testimony.

5 So to answer your question, no, we are
6 nowhere close. I mean, we are still in the first of
7 those three stages.

8 MR. JOLLY: I guess, just to follow up on that,
9 it's not so to say we're through developing
10 theories. We have theories, and we are working on
11 those theories, but we need to continue. There's
12 still a lot of information out there that hasn't
13 been reviewed that we are in the process of trying
14 to -- and, again, some of the things we have
15 reviewed aren't necessarily, you know, the final
16 answer in any of themselves, which I think point out
17 the need to conduct depositions so we can try to
18 understand what some of these documents mean.

19 MR. BRADY: Staff would agree with what both
20 Mr. Clarke and Mr. Jolly have said. We are just --
21 as far as what Mr. Clark said, the process at which
22 we are looking to getting to the hearing and get our

1 testimony filed is right now reviewing the
2 electronic documents so we have a feeling that we
3 have discovered the material that's in there that is
4 relevant to this case and to the extent then that
5 the reasons for the oral -- for oral depositions is
6 to resolve some of the -- an understanding of those
7 oral agreements that are in existence, and once we
8 have a clear deposition of how those agreements were
9 put together and the transactions follow those
10 agreements, then we can put together our testimony
11 and move toward hearings, and we are trying to do
12 that as quickly as possible.

13 MR. KELTER: I would just add CUB is putting
14 every resource we possibly can in this as quickly as
15 possible.

16 JUDGE MORAN: Okay. Here's my dilemma. I think
17 it's pretty obvious to everyone in the room,
18 probably even the court reporter, that some delay is
19 warranted, but I cannot in all good conscience delay
20 till July of 2005. You know, that means that
21 guarantees that whatever refunds, if any, that the
22 ratepayers get gets postponed until 2006 from

1 something that concerns 2000.

2 This is really not good, and, you know,
3 I don't want to hear discussion about it, but
4 certainly discovery -- some of the discovery could
5 have been tendered or propounded, I suppose, by some
6 of the parties in a more -- addressing more succinct
7 or requesting more succinct responses, and that
8 whole situation has caused a lot of delay.

9 So I will leave you alone in the room
10 together and try and see if you can't work something
11 out, but I will not grant a 10-month extension. I
12 don't see that it's warranted given the
13 circumstances in the motion and I don't see that
14 it's fair, and by fair, I mean to the client as
15 in, I mean, the People of the State of Illinois just
16 as much I mean Peoples Gas, Light and Coke Company.

17 It's just not right that the lawyers
18 caused the delay and the people -- or at least in
19 part cause of some delay -- and everybody and the
20 clients have to suffer, so I will rule on the motion
21 for reconsideration and I don't know how this
22 affects CUB, but I didn't get anything, so I just

1 decided to rule on it. Nobody asked for anything,
2 so I don't know how that's going to affect your
3 brief, but I'm prepared to rule on it.

4 MS. SODERNA: We assume the rule allows for 14
5 days to respond to a motion. I didn't realize we
6 had to request leave to file.

7 JUDGE MORAN: Well, to be blunt with you, and
8 I'll give you my reasoning in a second, this is my
9 concern. I'm going to grant it, so I don't want you
10 to have to file a brief unnecessarily --

11 MS. SODERNA: Okay.

12 JUDGE MORAN: -- at least in part, so you might
13 pay attention, and only in part, but certainly an
14 important part.

15 When I made the ruling on Peoples'
16 motion to bar further electronic discovery, I did it
17 because the search requests you made were very, very
18 broad and there was little or no delineation, at
19 least it seemed to me from what I could see, as to
20 what information the propounding parties were
21 seeking. There seem to be little attempt to
22 identify the time period and there seem to be little

1 attempt to limit the computers that would be
2 searched to the computers of people with actual
3 knowledge.

4 I note that staff stated in its reply
5 brief in its motion to reset the schedule that it
6 has been forced to shift through a chaff of
7 documents to find the occasional kernel of
8 responsive documents.

9 The way to avoid sifting through a
10 chaff of documents is to ask specific questions.
11 This avoids the unnecessary delay and acrimony that
12 follows when opposing counsel either procures and
13 tenders everything that is responsive to something
14 broad or just objects; however, what concerns me is
15 that the origin of the electronic documents tendered
16 was a search originally for evidence in a completely
17 different kind of tribunal than this one and it's
18 really not known what laws were at issue regarding
19 that search; therefore, it is possible that there
20 may be evidence that -- that is relevant to this
21 tribunal that appears in electronic form that has
22 not already been tendered.

1 I am reversing my decision on
2 reconsideration barring further electronic discovery
3 in part. I'm not reversing the part of the decision
4 barring the present electronic discovery requests.
5 Those requests are vague, overbroad, and unduly
6 burdensome, but staff and the intervening parties
7 have leave to tender reasonable discovery requests,
8 and I realize that electronic discovery presents
9 challenges, but I expect the parties to make
10 requests concerning the computer of Peoples'
11 employee who possesses knowledge of the event in
12 question or who participants in the event in
13 question.

14 I expect the requests not to duplicate
15 what's already been asked for and tendered. I
16 expect the request to be as specific as to time,
17 type of document, and like information as possible,
18 and if you don't have enough information to seek
19 specific documents or ask specific questions, then
20 tender a set of interrogatories, or take a
21 deposition, and please ask those questions so that
22 you can ask specific questions when you are asking

1 for electronic information.

2 I would strongly urge taking
3 depositions of persons with knowledge of the events
4 as opposed to interrogatories, because depositions
5 are faster. Interrogatories take time.

6 Now on a slightly different note, I
7 realize that the discovery requests here, at least
8 some parties may have propounded, may have been
9 drafted by non-lawyers, but it's a lawyer's job to
10 make sure that discovery requests are legally
11 viable, that is, it is a lawyer's responsibility to
12 make sure that whatever his entity propounds will
13 not just produce boxes and boxes of useless
14 information or legitimate objections from opposing
15 counsel; therefore, it is up to the lawyers to make
16 sure that their discovery requests comport with our
17 Rules of Practice, and when in doubt you can always
18 look to Supreme Court Rules, which we use when
19 there's nothing on point with our rules.

20 Okay. You all have starting points.
21 The data requests at issue that you already have,
22 and whatever you do, please do it quickly, so --

1 MR. MULROY: Your Honor, I would ask you to
2 consider putting a time, a schedule for when these
3 requests come to us.

4 JUDGE MORAN: Right. Right. So we need a time
5 for discovery requests, a discovery cutoff, and at
6 least a trial date. And anything else? Status
7 hearing soon, I'm sure.

8 MS. SODERNA: I just want to ask a clarification
9 on one point. You said that your ruling stands
10 regarding present electronic discovery requests.
11 You mean those submitted in CUB 13, through CUB 13,
12 and Staff's PL 16? Does that apply also to the
13 deleted files? That was another sort of separate
14 issue.

15 JUDGE MORAN: It reapplies to deleted files
16 also.

17 MS. SODERNA: So people need not search deleted
18 files?

19 JUDGE MORAN: No, I didn't say that. You have to
20 draft specific discovery requests if you want
21 something from deleted files.

22 MS. SODERNA: Okay.

1 JUDGE MORAN: Deleted files do cause an extra
2 burden and an extra expense. They are not easy to
3 reconstruct, so if there's any way that you can
4 minimize the use of deleted files, please do.

5 Okay. I'm going to leave you alone in
6 the room for 10 or 15 minutes. So we are all clear,
7 we need a cutoff for discovery, a time for trial,
8 and a time -- there was a third --

9 MR. BRADY: Discovery requests.

10 JUDGE MORAN: -- discovery requests, a time to
11 propound the discovery, the time to cutoff
12 discovery, including deps, and a time for trial.
13 Anything else?

14 MR. BRADY: Your Honor, this is just -- I think
15 this is probably my inability to follow the
16 situation. I guess I'm confused on your ruling for
17 reconsideration -- on the reconsideration, because
18 it seems to be going back to the original requests,
19 the actual questions that were in the data requests;
20 whereas, in this proceeding we were -- we had moved
21 away from that point and had actually replaced
22 requests for electronic documents with key word

1 searching for --

2 JUDGE MORAN: Right.

3 MR. BRADY: And so the point, at least from
4 staff's view, is that Peoples Gas should be going
5 back and searching for the key terms that --

6 JUDGE MORAN: All right. So we are clear, your
7 key word searches were vague, overbroad, and
8 unspecific, too, so you have to tender some new
9 discovery requests. I'm not limiting the subject
10 matter. I am limiting you to be specific, hopefully
11 that will limit the amount of work, but --

12 MR. BRADY: Okay.

13 JUDGE MORAN: By limiting the amount of work for
14 Peoples, I just -- so you don't think I'm playing
15 favorites, I'll also tell you -- remind you all that
16 there is one rule of discovery that you all should
17 keep in mind and that is do unto others, don't
18 tender something that you wouldn't want to answer
19 yourself.

20 MR. MULROY: Just to re-emphasize what we put in
21 our papers, further electronic search means no
22 matter how described means a completely new setup at

1 the company, which is going to cost, as we said,
2 hundreds and hundreds of thousands of dollars.
3 Searching the deleted files will require us to go to
4 an outside vendor, which will cost hundreds of
5 thousands of dollars whether they ask for one phrase
6 or a hundred.

7 JUDGE MORAN: I am not sure whether there will be
8 a need. I just feel uncomfortable closing them off
9 from doing that given the source, which is why I am
10 requiring you, and I have said this more than once,
11 to make sure that you don't already have the
12 information.

13 We are not going to do duplicative
14 discovery, and they may not have a need after they
15 take depositions or after they go through all the
16 CDs and DVDs, so I'm not trying to be -- trying to
17 put a burden on Peoples either. I just want to make
18 sure everything is covered.

19 MR. MULROY: I understand. I'm slow on the
20 uptake. One of the things that confuses me that
21 they haven't looked at what they have yet.

22 JUDGE MORAN: Right.

1 MR. MULROY: Yet, I think we are talking about
2 further discovery, but I think what you are saying
3 is they will submit discovery requests and we'll
4 take Step 2 after that.

5 JUDGE MORAN: Right. All right. So I'm leaving
6 you alone for about ten minutes, and you are working
7 on these three cutoffs, and, remember, if you don't
8 come to agreement, I'm sure whatever I impose on you
9 you all will dislike, so try and work it out,
10 please.

11 (Whereupon, a recess was
12 taken.)

13 We'll go back on the record.

14 We are continuing this to Monday,
15 September 27th, at 11 a.m., for status at which
16 time we'll, one way or another, develop a
17 hard-and-fast discovery cutoff date by which all
18 electronic discovery requests have to be propounded
19 and a trial date and certainly hard and fast on the
20 other two dates, too, so that's it I think.

21 Anything else?

22 Okay.

1 MR. BRADY: Thank you.

2 MR. CLARKE: Thank you.

3 MR. BRADY: Thank you, your Honor.

4 JUDGE MORAN: Is there -- go back on the record.

5 Mr. Mulroy, just so we are clear, I

6 forgot there was a motion to continue North Shore,

7 so I'm officially denying that -- you look worried,

8 Mr. Jolly.

9 MR. JOLLY: I'm just curious.

10 JUDGE MORAN: North Shore will be piggyback on.

11 Peoples just like everything else. It's just denied

12 the Peoples one, so I'm denying the North Shore one,

13 too, just so we are all clear.

14 (Whereupon, the above

15 matter was adjourned,

16 to be continued to

17 September 27, 2004

18 at 11 o'clock a.m.)

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State of Illinois
ILLINOIS COMMERCE COMMISSION

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(To be filed with the Chief Clerk)

MINUTES

Chicago, Illinois
September 21, 2004

Case No. 01-0707

Subject: ILLINOIS COMMERCE COMMISSION
On Its Own Motion

-vs-

PEOPLES GAS, LIGHT AND COKE COMPANY

Reconciliation of revenues collected under gas
adjustment charges with actual costs prudently
incurred

HEARD BY: MS. EVE MORAN,
ADMINISTRATIVE LAW JUDGE

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8 DISPOSITION: Continued to September 19, 2004 at
9 11 a.m.

10 EXHIBITS FILED: (None.)

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12 Patricia Wesley

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1 CERTIFICATE OF REPORTER

2 STATE OF ILLINOIS)
COUNTY OF COOK) SS:
3 CASE NUMBER: 01-0707
TITLE: ILLINOIS COMMERCE COMMISSION
4 On Its Own Motion
-vs-
5 PEOPLES GAS, LIGHT AND COKE COMPANY

6 Reconciliation of revenues collected under gas
adjustment charges with actual costs prudently
7 incurred

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21st day of September A.D., 2004; that the foregoing
11 32 pages are a true and correct transcript of my
shorthand notes so taken as aforesaid, and contains
12 all of the proceedings direct by the Commission or
other person authorized by it to conduct the said
13 hearing to be stenographically reported, dated at
Chicago, Illinois, this 8th day of October, A.D.
14 2004.

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Certified Shorthand Reporter

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